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21 ROWLAND MARCUS ANDRADE

22
23 IN THE UNITED STATES DISTRICT COURT
24 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
25 SAN FRANCISCO DIVISION

26 THE UNITED STATES OF AMERICA, } Case No.: 20-CR-00249-RS
27 } Plaintiff, }
28 } vs. }
 }
ROWLAND MARCUS ANDRADE, }
 }
 }
 }

1 **INTRODUCTION**

2 Mr. Andrade brings this motion to present his objections to experts disclosed as witnesses
 3 in the government's case in chief. Without waiving any cross-examination rights, nor the right
 4 to object to testimony offered during trial, Mr. Andrade presents these objections for this Court's
 5 in limine review:

- 6 1. Objections to the proffered opinion testimony of Agent James Carfora under the Federal
 7 Rules of Evidence.
- 8 2. Mr. Andrade has no objection under *Daubert* or Rule 702 to the proffered expert opinion
 9 from government's disclosed expert Brandon Tabbal, beyond one objection raised below.
- 10 3. Mr. Andrade has no objection under *Daubert* or Rule 702 to the proffered expert opinion
 11 from government's disclosed expert Theresa Chiu.

12 **1. OBJECTIONS TO SPECIAL AGENT CARFOLA'S TESTIMONY**

13 Three portions of Special Agent Carfora's testimony are impermissible under Federal
 14 Rule of Evidence 704(b) and settled Ninth Circuit law.

15 *First*, the government's notice proffers that SA Carfora will testify that Mr.
 16 Andrade "layered and commingled funds raised from investors in AML Bitcoin *in order*
 17 *to conceal their source, and then to further conceal their integration, or use,* for
 18 Andrade's personal benefit" (emphasis added). ECF 420 at 3:16-17. This testimony that
 19 Mr. Andrade acted "in order to conceal" is expressly prohibited by Rule 704(b), which
 20 reserves the decision about Mr. Andrade's intent "for the trier of fact alone," and declares
 21 that "an expert witness must not state an opinion about whether the defendant did or did
 22 not have a mental state or condition that constitutes an element of the crime charged or of
 23 a defense."

24 In accord with Rule 704(b), the Ninth Circuit and other courts allow experts to
 25 say that behavior "might be consistent with" or "indicative of" criminal behavior, *United*
26 States v. Alonzo, 48 F.3d 1536, 1541 (9th Cir. 2005), but prohibit "testimony from which
 27 it necessarily follows, if the testimony is credited, that the defendant did or did not
 28 possess the requisite mens rea." *United States v. Morales*, 108 F.3d 1031, 1037 (9th Cir.

1 1997) (en banc). Applying those principles to cases like this one, courts have not allowed
 2 government experts to testify in a money laundering case that the defendant engaged in
 3 financial transactions *with the specific intent to conceal or disguise the source of funds,*”
 4 *United States v. Babichenko*, 2021 U.S. Dist. LEXIS 108476 (D. Idaho 2021), (emphasis
 5 added), or to testify ““that the conduct underlying the money-laundering counts was . . .
 6 money laundering.”” *United States v. Reulet*, 2015 U.S. Dist. LEXIS 161540 (D. Ks
 7 2014).

8 *Second*, SA Carfora proposes testimony that Mr. Andrade’s transfer and use of
 9 funds to buy two properties was “accomplished through the layering and comingling of
 10 funds Andrade *raised from AML Bitcoins through fraudulent misrepresentations.*” ECF
 11 420 at 3:24-25. This opinion includes a conclusion that Mr. Andrade acted with
 12 fraudulent intent, and that he is guilty of Count One – conclusions delegated to the jury
 13 based on proof beyond a reasonable doubt, rather than to FBI agents. Both of these
 14 conclusions are impermissible. *See, e.g., United States v. Reulet*, 2015 U.S. Dist. LEXIS
 15 161540, at *25 (D. Ks. 2014) (government’s expert was prevented from testifying about
 16 “criminally derived property,” because such a phrase “presupposes the commission of a
 17 criminal offense”)

18 *Third*, SA Carfora offers to testify that Andrade’s purchase of a \$600,000
 19 cashier’s check on March 7, 2018, his deposit of that check into his personal account, and
 20 his use of the money to buy personal properties “is indicative of concealment and
 21 promotional money laundering.” ECF 420 at 3:25-28. This testimony goes beyond the
 22 authorization in *Alonzo*, 48 F.3d 1536 at 1541, which limits the testimony to what “may
 23 be” rather than “is” indicative of concealment and money laundering.

24 In addition to this impermissible testimony, SA Carfora has failed to provide fully
 25 the bases and reasons for his opinion, in that he purports to rely on a “model to help
 26 describe the general methodology of money laundering,” ECF 420 at 2:24-25, but the
 27 model is not provided or validated under Federal Rule 702(c). Since SA Carfora purports
 28 to testify based on his use of a model, as proponent of the evidence the government is

obligated to establish that the model is “the product of reliable principles and methods.” Fed R. Ev. 702(c).

2. OBJECTIONS TO EXPERT OPINION FROM BRANDON TABBAL

Mr. Andrade has no objection to Tabbal's proffered educational testimony under Rule 702 and *Daubert*, but the government's disclosures about Mr. Tabbal do not reflect any specific expert opinions.

Mr. Andrade does object to one small portion of Tabbal's proffer: Tabbal proposes to say that he has provided trainings explaining "how to identify if a [cryptocurrency] wallet is used for the sale of child sexual abuse material (child pornography)." *See* ECF 419 at 2:22. The use of cryptocurrency and/or wallets in the sale of child pornography is irrelevant to this case, and testimony of this nature would be unduly prejudicial due the inflammatory nature of the subject matter. Fed. Rule of Ev., Rule 403.

3. OBJECTIONS TO EXPERT OPINION FROM THERESA CHIU

Mr. Andrade has no objection to Chiu's proffered testimony under Rule 702 and Daubert.

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Respectfully Submitted,

/s/

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